

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Wurtzel	Team: Squad #2	CCRB Case #: 201502891	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 01/09/2015 8:47 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 7/9/2016	EO SOL 7/9/2016	
Date/Time CV Reported Thu, 04/16/2015 4:42 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/16/2015 4:42 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Sean Higgins	01585	932790	043 PCT
2. POF Jennifer Nicalek	23751	945735	043 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Hugh Barry	4738	946768	043 PCT
2. POM Jeffrey Filizzola	03126	934860	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Higgins	Abuse: PO Sean Higgins threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
B.POM Sean Higgins	Discourtesy: PO Sean Higgins spoke rudely to § 87(2)(b)	§ 87(2)(b)
C.POM Sean Higgins	Abuse: PO Sean Higgins threatened to arrest § 87(2)(b)	§ 87(2)(b)
D.POF Jennifer Nicalek	Discourtesy: PO Jennifer Nicalek spoke rudely to § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)

Case Summary

On January 9, 2015, at 8:47 p.m., § 87(2)(b) was at home at § 87(2)(b) in the Bronx when she called 911, stating that § 87(2)(b) PO Sean Higgins and PO Jennifer Nicalek of the 43rd Precinct arrived shortly after and spoke with § 87(2)(b) § 87(2)(b) and § 87(2)(b) older daughter, § 87(2)(b) and determined that the complaint was false. PO Higgins and PO Nicalek went upstairs to speak with § 87(2)(b) and her boyfriend, § 87(2)(b). At this time, a dog belonging to § 87(2)(b) but living with § 87(2)(b) ran out of the apartment and towards § 87(2)(b). The officers determined that the dog belonged to § 87(2)(b) and permitted him to keep it, resulting in § 87(2)(b) and § 87(2)(b) becoming emotional and speaking loudly towards the officers. § 87(2)(b) was verbally combative with the officers and PO Higgins allegedly told PO Nicalek that he was going to “beat his fucking ass.” This comment was made in reference to § 87(2)(b) (**Allegations A and B**). § 87(2)(b) asked PO Higgins who he was threatening and PO Higgins confirmed that he was threatening him.

§ 87(2)(b) further alleged that PO Higgins told § 87(2)(b) to, “shut the fuck up” at this time (**Allegation B continued**). § 87(2)(b) alleged that PO Higgins said, “You’re lucky I don’t arrest your ass for a misdemeanor because you’re over there making false complaints, (**Allegation C**). § 87(2)(b) and § 87(2)(b) were removed from the location due to § 87(2)(b)’s admission that he was not taking medication for his bi-polar disorder and his assertion that § 87(2)(b) was suffering from a nervous breakdown. As § 87(2)(b) was being led from the apartment, PO Nicalek allegedly informed her that § 87(2)(b) was a “nutcase.” § 87(2)(b) alleged that he heard PO Nicalek tell § 87(2)(b) that she was “crazy,” (**Allegation D**) (encl. 4A-6D). § 87(2)(b) and § 87(2)(b) were removed the building as EDPs and brought to § 87(2)(b). They were not placed under arrest or issued any summonses.

Mediation, Civil and Criminal Histories

§ 87(2)(b) declined to mediate this case, stating that he did not think the process would resolve his issues with the police officers. § 87(2)(b) stated that he intended to file a lawsuit. Confirmation from the New York City Office of the Comptroller will be forwarded upon receipt (encl. 12A). § 87(2)(b) has no prior criminal conviction histories and § 87(2)(b) has never been arrested before (encl. 13A-B).

Civilian and Officer CCRB Histories

- PO Higgins has been a member of the NYPD for 11 years and has had five previous CCRB allegations involving four cases and no substantiated allegations (encl. 2A).
- PO Nicalek has been a member of the NYPD for seven years and has had five previous CCRB allegations involving two cases and no substantiated allegations (encl. 2B).
- § 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- This is § 87(2)(b)'s first CCRB complaint (encl. 3B).

Findings and Recommendations

Explanation of Subject Officer Identification

PO Higgins and PO Nicalek acknowledged interacting with § 87(2)(b) on the incident date and both officers matched the physical descriptions provided by § 87(2)(b) and § 87(2)(b).

Recommendation

Allegation A – Abuse of Authority: PO Sean Higgins threatened § 87(2)(b) with the use of force.

Allegation B – Discourtesy: PO Sean Higgins spoke rudely to § 87(2)(b)

Allegation D – Discourtesy: PO Jennifer Nicalek spoke rudely to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that PO Higgins stated that he was going to “beat his fucking ass” and said “You’re lucky I don’t arrest your ass for a misdemeanor because you’re over there making false complaints.” § 87(2)(b) did not allege that this remark was made during the incident. § 87(2)(b) alleged that she heard PO Higgins tell § 87(2)(b) to, “Shut the fuck up.” § 87(2)(b) further alleged that PO Nicalek referred to § 87(2)(b) as a “nutcase” as they were being led from the apartment. § 87(2)(b) alleged that he heard PO Nicalek tell § 87(2)(b) that she was “crazy.” § 87(2)(b) did not hear PO Nicalek refer to him as a “nutcase” and § 87(2)(b) did not allege that PO Nicalek referred to her as “crazy.”

§ 87(2)(b) and § 87(2)(b) both stated that PO Higgins and PO Nicalek were professional and courteous, however both individuals left the location before § 87(2)(b) and § 87(2)(b) were removed from the building (encl. 7A-8A).

PO Higgins denied threatening § 87(2)(b) with the use of force and denied using profanity while speaking with § 87(2)(b). Additionally, PO Higgins denied hearing PO Nicalek speak rudely to or about § 87(2)(b) and § 87(2)(b) (encl. 9A-F). PO Nicalek denied hearing PO Higgins threaten § 87(2)(b) with the use of force and denied hearing him use profanity during the incident. PO Nicalek denied speaking rudely to or about § 87(2)(b) or § 87(2)(b) (encl. 10A-F).

§ 87(2)(g)

Allegation C – Abuse of Authority: PO Sean Higgins threatened to arrest § 87(2)(b)

It is undisputed that PO Higgins informed § 87(2)(b) that he could be arrested for making a false complaint.

§ 87(2)(b) alleged that PO Higgins told him that he would be arrested for making false complaints. PO Higgins confirmed that he issued this warning to § 87(2)(b). PO Nicalek did not hear PO Higgins threaten to arrest § 87(2)(b) and § 87(2)(b) did not allege that she heard an officer threaten to arrest § 87(2)(b). § 87(2)(b) and § 87(2)(b) left prior to the conclusion of the confrontation and did not hear PO Higgins tell § 87(2)(b) he would be arrested.

§ 87(2)(b), § 87(2)(a)

§ 87(2)(b), § 87(2)(a)

§ 87(2)(b) did state that he argued with the officers concerning custody of a dog that was living with him during this time. The event summary for this complaint indicates that the original complaint was resolved approximately 20 minutes after the officers arrived on the location and was eventually closed as ‘unnecessary.’ The event summary further reflects that officers discussed the custody of the dog in § 87(2)(b) s apartment with him (encl. 11A-J).

Section 240.50 of the New York State Criminal Procedure Law states it is a misdemeanor to report to an law enforcement agency (a) an alleged occurrence of an offense or incident which in fact did not occur; or (b) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense of incident or to the alleged implication of some person therein (encl. 1A-B).

§ 87(2)(g)

Pod: 2

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date